



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0064]

[4500030114]

RIN 1018–AX40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the August 25, 2011, proposed revised designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch) under

the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for *A. l. var. coachellae* and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed revised designation, the associated DEA, and the amended required determinations section. We are also announcing the location and time of a public hearing to receive public comments on the proposal. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION].

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public Hearing: We will hold a public hearing on this proposed rule on May 31, 2012, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for Docket No. FWS–R8–ES–2011–0064, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0064; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Public hearing: We will hold a public hearing in the Palm Springs City Hall Council Chamber, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92263.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Ste. 101, Carlsbad, CA, 92011; telephone 760–431–9440; facsimile 760–431–5902. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revised designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* that was published in the **Federal Register** on August 25, 2011 (76 FR 53224), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the taxon (the term taxon, as used herein, refers to any taxonomic rank that is not a species (for example, a genus, a subspecies, or a variety); *Astragalus lentiginosus* var. *coachellae* is a variety) from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of *Astragalus lentiginosus* var. *coachellae*;

(b) The amount and distribution of *Astragalus lentiginosus* var. *coachellae* habitat;

(c) What areas within the geographical area occupied by the taxon at the time of listing that contain physical or biological features essential to the conservation of the taxon we should include in the designation and why; and

(d) What areas outside the geographical area occupied by the taxon at the time of listing are essential for the conservation of the taxon and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts associated with climate change on *Astragalus lentiginosus* var. *coachellae* and proposed critical habitat.

(5) What areas, extent, and quality of the unoccupied fluvial (water) sand transport systems in the Coachella Valley and surrounding hills and mountains are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* and should be included in the designation and why.

(6) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(7) Which specific areas within tribal lands proposed for critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific tribal lands outweigh the benefits of including that area, in particular for tribal lands owned or managed by the Morongo Band of Mission

Indians (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation) or the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation.

(8) Which specific lands covered by the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (Coachella Valley MSHCP/NCCP) proposed as critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area covered by the Coachella Valley MSHCP/NCCP outweigh the benefits of including that area. We are currently considering all lands covered by the Coachella Valley MSHCP/NCCP and proposed as critical habitat for exclusion under section 4(b)(2) of the Act (see the *Habitat Conservation Plan Lands—Exclusions under Section 4(b)(2) of the Act* section below).

(9) What specific actions the Coachella Valley Association of Governments (CVAG) has undertaken to meet the objectives and goals set out in the Coachella Valley MSHCP/NCCP specific to *Astragalus lentiginosus* var. *coachellae* since CVAG began implementing the MSHCP/NCCP.

(10) Whether there are any other lands covered by habitat conservation plans or other conservation actions that benefit *Astragalus lentiginosus* var. *coachellae* and should be considered for exclusion under section 4(b)(2) of the Act, where the benefits of potentially excluding any specific area outweigh the benefits of including that area.

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(12) The validity of our approach for determining the extent of the fluvial sand transport system, and differentiating between fluvial sand transport and fluvial sand source areas. We identified fluvial sand source areas (areas where sediment is eroded from parent rock by moving water) as portions of drainages where slope is 10 percent or greater and fluvial sand transport areas (corridors along which water transports sediment, but little erosion of parent rock takes place) as portions of drainages where slope is less than 10 percent. This approach was informed by Griffiths *et al.* (2002, p. 21), who found that sediment production in the drainage areas supplying sand to *Astragalus lentiginosus* var. *coachellae* habitat is much lower in areas where the ground slope is less than 10 percent.

(13) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

If you submitted comments or information on the proposed rule (76 FR 53224) during the initial comment period from August 25, 2011, to October 24, 2011, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination

concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed do not meet the definition of critical habitat, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R8-ES-2011-0064, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at

Docket Number FWS–R8–ES–2011–0064, or by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Public Hearings

The public hearings will take place on May 31, 2012, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in the Palm Springs City Hall Council Chamber, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92263. The public hearing location is wheelchair-accessible. If you plan to attend the public hearing and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the US FWS (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* in this document. For more information on previous Federal actions concerning *A. l.* var. *coachellae*, refer to the proposed revised designation of critical habitat published in the **Federal Register** on August 25, 2011 (76 FR 53224). For more information on *A. l.* var. *coachellae* or its habitat, refer to the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), which is available online at <http://www.regulations.gov> (at Docket Number FWS–R8–ES–2011–0064) or from the Carlsbad Fish and Wildlife Office (see

FOR FURTHER INFORMATION CONTACT).

Previous Federal Actions

The following section summarizes the previous Federal actions since *Astragalus lentiginosus* var. *coachellae* was listed as endangered on October 6, 1998 (63 FR 53596); please refer to this final listing rule for a discussion of Federal actions that occurred prior to the taxon's listing.

At the time of listing, we determined that designation of critical habitat was “not prudent” (63 FR 53596). On November 15, 2001, the Center for Biological Diversity (CBD) and the California Native Plant Society (CNPS) filed a lawsuit against the Secretary of the Interior and the Service challenging our “not prudent” determinations for eight plant taxa, including *Astragalus lentiginosus* var. *coachellae* (*Center for Biological Diversity, et al. v. Norton*, case number 01–cv–2101 (S.D. Cal.)). A second lawsuit asserting the same challenge was filed on November 21, 2001, by the Building Industry Legal Defense Foundation (*Building Industry Legal Defense Foundation v. Norton*, case number 01–cv–2145 (S.D. Cal.)). The parties in both cases agreed to remand the critical habitat determinations for the eight plant taxa at issue to the Service for reconsideration. On July 1, 2002, the Court directed us to reconsider our not prudent determination and if we determined that designation was prudent, submit to the **Federal Register** for publication a proposed critical habitat designation for *A. l.* var. *coachellae* by November 30, 2004, and to submit to the **Federal Register** for publication a final rule designating

critical habitat by November 30, 2005. The proposed rule to designate critical habitat for *A. l. var. coachellae* published in the **Federal Register** on December 14, 2004 (69 FR 74468). The final rule designating critical habitat for *A. l. var. coachellae* published in the **Federal Register** on December 14, 2005 (70 FR 74112).

The Center for Biological Diversity filed a lawsuit on January 14, 2009, claiming the Service failed to designate adequate critical habitat for *Astragalus lentiginosus* var. *coachellae* (*CBD v. Kempthorne*, case number ED-cv-09-0091 VAP(AGRx) (C.D. Cal.)). In a settlement agreement dated November 14, 2009, we agreed to reconsider the critical habitat designation for *A. l. var. coachellae*. The settlement required the Service to submit a proposed revised critical habitat designation for *A. l. var. coachellae* to the **Federal Register** by August 18, 2011, and submit a final revised critical habitat designation to the **Federal Register** by February 14, 2013.

On August 25, 2011, we published a proposed rule to revise critical habitat for *Astragalus lentiginosus* var. *coachellae* (76 FR 53224). We proposed to designate approximately 25,704 acres (ac) (10,402 hectares (ha)) in 4 unit(s) located in Riverside County, California, as critical habitat. That proposal had a 60-day comment period, ending October 24, 2011. We will submit for publication in the **Federal Register** a final critical habitat designation for *A. l. var. coachellae* on or before February 14, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of the designated critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that may affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional

regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Astragalus lentiginosus* var. *coachellae*, the benefits of critical habitat include public awareness of the presence of *A. l.* var. *coachellae* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *A. l.* var. *coachellae* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed revised critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for *Astragalus lentiginosus* var. *coachellae*. The DEA separates conservation measures into two distinct categories according to “without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to *A. l.* var. *coachellae* (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the taxon. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, “Framework for the Analysis,” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for *Astragalus lentiginosus* var. *coachellae* over the next 20 years, which was determined to be the appropriate period for

analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of *A. l. var. coachellae* conservation efforts associated with the following categories of activity: (1) residential, commercial, and industrial development; (2) water management and use; (3) transportation activities; (4) energy development; (5) sand and gravel mining; and (6) tribal activities.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for *Astragalus lentiginosus* var. *coachellae*. The DEA does not quantify baseline economic impacts, but does include a qualitative discussion of activities likely to be undertaken to protect *A. l. var. coachellae* absent the designation of critical habitat as a result of Federal, State, and local regulations as well as the Coachella Valley MSHCP/NCCP, the California Desert Conservation Area Plan (on BLM lands), wilderness designation (on BLM and USFS lands) and the Coachella Valley National Wildlife Refuge (on Service lands).

The DEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the 20 years following the designation (2013 to 2032) to be \$220,000 to \$820,000 (\$20,000 to \$73,000 annualized) in present value terms applying a 7 percent discount rate (IEc 2012, p. ES-2). Conservation efforts related to residential, commercial, and industrial development projects account for the largest share

of impacts under the high-end (\$820,000) estimate. These costs, \$590,000 in project modification costs (assuming a 7 percent discount rate) plus administrative costs resulting from the consideration of adverse modification in section 7 consultations, are projected to occur in the unoccupied portion of Unit 3, within the City of Desert Hot Springs. The DEA estimates that proponents of transportation activities, such as road and bridge construction and maintenance, are likely to experience the next largest impacts after residential, commercial, and industrial development, including approximately \$1,300 in project modification costs (7 percent discount rate), plus administrative costs. Water management and use, energy development, and sand and gravel mining projects are projected to incur only administrative costs due to the critical habitat designation. The DEA predicts only administrative costs to the Agua Caliente Band of Cahuilla Indians as a result of the designation, and no incremental impacts to the Morongo Band of Mission Indians, because no future section 7 consultations are anticipated on the portion of their lands proposed as critical habitat.

The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The DEA measures lost economic efficiency associated with residential and

commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the revised critical habitat designation might unduly burden a particular group or economic sector.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this taxon.

Changes to Proposed Revised Critical Habitat

In this document, we are making a correction to the proposed revised critical habitat for *Astragalus lentiginosus* var. *coachellae* as identified and described in the preamble to the proposed rule that we published in the **Federal Register** on August 25, 2011 (76 FR 53224). The correction is in regard to the description of Unit 1 (76 FR 53240). Unit 1 contains 316 ac (128 ha) of tribal land (Morongo Band of Mission Indians) and 1,791 ac (725 ha) of private land. Of this area, we characterized 156 ac (63 ha) of tribal land and 1 ac (0.4 ha) of private land as being covered under the Western

Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP), due to an incorrect interpretation of GIS data. These lands are within the boundaries of the Western Riverside County MSHCP, but they are “inholdings” (that is, they are not covered by or subject to the provisions of the Western Riverside County MSHCP or any other Habitat Conservation Plan). All other acreages reported in the proposed rule are correct to the best of our knowledge, and the boundaries of the proposed revised critical habitat remain the same as described in the proposed rule. No part of the proposed critical habitat for *A. l. var. coachellae* is covered by the Western Riverside County MSHCP.

Required Determinations—Amended

In our August 25, 2011, proposed rule (76 FR 53224), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government

Relations with Native American Tribal Governments” (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small

organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the proposed revised designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential, commercial, and industrial development. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any

Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *A. l. var. coachellae* is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the taxon. If we finalize this proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed revised designation of critical habitat for *Astragalus lentiginosus* var. *coachellae*. The DEA is based on the estimated incremental impacts associated with the proposed rulemaking as described in Chapters 3 through 5 of the DEA. The SBREFA analysis evaluates the potential for economic impacts related to several categories, including: (1) residential, commercial, and industrial development; (2) water management and use; (3) transportation activities; (4) energy development; (5) sand and gravel mining; and (6) tribal activities (IEc 2012, p. A-4). On the basis of our draft analysis, we have determined that no incremental impacts attributed to water management and use, transportation activities, energy development, sand and gravel mining, and tribal activities are expected to be borne by entities that meet the definition of small entities (IEc 2010, pp. A-4–5). Potential impacts in these sectors are expected to be borne by water management agencies, State agencies, Federal agencies, other governmental agencies, and nongovernmental agencies that are not considered to be small business

entities.

However, the DEA concludes that the proposed rulemaking potentially may affect small entities in the residential, commercial, and industrial development sector (IEc 2010, p. A-6). There are 6,151 businesses involved in development activities within San Bernardino, Riverside, Orange, and Los Angeles Counties and, of these, 6,076 are considered small. Because information on the number of projects or developers likely to be affected is not available, the DEA presents a bounding analysis, assuming that a single developer bears all costs associated with growth in proposed critical habitat. Under this assumption, \$52,260 in incremental costs would accrue to one developer per year. Assuming the average small entity has annual revenues of approximately \$5.1 million, this annualized impact represents approximately 1 percent of annual revenues. The assumption that all costs accrue to one developer likely overstates the impact significantly; thus, the DEA estimates incremental impacts to small developers of less than 1 percent of annual revenues (IEc 2010, pp. A-8–9). For development activities, potential impacts to small development firms may also be overstated because much or all of the costs of milk-vetch conservation efforts may ultimately be borne by current landowners. Many of these landowners may be individuals or families that are not legally considered to be businesses. No NAICS code exists for landowners, and the SBA does not provide a definition of a small landowner. Additionally, the development projected for Desert Hot Springs may not occur, as those lands fall within the 100-year floodplain (IEc 2010, p. A-9). Please refer to the DEA of the proposed revised critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and our files. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation would result in incremental impacts to small developers of less than 1 percent of annual revenues; and, thus, would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: May 7, 2012

Rachel Jacobson

Acting Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55-P

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